

OTHMANIYYAH GOVERNMENT INFLUENCE IN MUSLIM CIVIL LAWS IN MALAYSIA: REFERENCE TO THE MAJALAH AHKAM JOHOR

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abstract

During Johor through modern times, it did not escape from accepting the influence of foreign countries. Sultan Abu Bakar, who is responsible for the foreign policy of his country had a wide series of visits and diplomatic ties with European countries and the Middle East. Looking at the policy is not surprising to say the first Malay state of Johor has written its own constitution.

Position as a state that is in the process of implementing Islamic law can be seen when the Johor government holding Othmaniyyah relationship with Turkey. The biggest Turkish influence in the administration of Islamic law in the state of Johor is the implementation of Islamic civil law named Majalah Ahkam Johor. The Majalah was taken from Majallah al-Ahkam al-`Adliyyah implemented in Othmaniyyah government Turkey in the 19th century AD and its influence spread throughout Turkey colony in West Asia like in Syria, Lebanon and Egypt.

This show the Johor Government relations with West Asia has been so closely intertwined with particularly during the reign of Sultan Abu Bakar and generally before the existence of the Islamic Government of Malacca again. Marital relations, trade, culture, arts, law and so assures us that the strong relationship between the two countries have gone a long time.

Keywords: Islamic Civil Law, Majalah Ahkam Johor

1.0 Introduction

Johor state government's relationship with Othmaniyyah began when Sultan Abu Bakar held a series of visits to that country in 1893 AD (Mohd. Said Hj. Solomon: 1951:62). Johor position the only country on the east side for the time being so serious in making Islam as the basis of his country was open to the Government to hold Othmaniyyah closer relationships between beliefs, particularly Islamic nations in the Middle East. This was shown by Johor saga that says, *"...hingga pada akhirnya lantastlah Yang Maha Mulia berjumpa dengan Yang Maha Mulia Sultan Abdul Majid Khan di Kostantinopel. Maka diterimalah oleh baginda dengan sebaik-baik terimaan serta diraikan dengan secukup-*

cukupnya kerana amatlah gemar Yang Maha Mulia Sultan Turki itu melihatkan seorang raja sebelah timur begitu baik bawaan dan aturannya pada hal beragama Islam.” (ibid: 58)

The above statement is at once explained to us that the Johor-Othmaniyyah relationship is very different from Johor relations with countries outside the other. Various statements, we can see the show that his relationship with the Othmaniyyah Government brings a new influence to Johor. For example, the implementation of the Constitution Bill 1895 Johor, Johor Sultan of dress, design Masjid Abu Bakr (Shamsiah Ibrahim: 1976: 2), Islamic code creation and the most interesting star honorary gift from Sultan Abdul Majid Turkey (Onn Jaafar: 1935: 19). May also Johor Bahru at the moment can be described as a "twin cities" with the City of Constantinople.

Relationship with the Othmaniyyah Government as an Islamic country has indeed a very positive impact in the development of Islamic law in the state of Johor. This can be seen with the implementation of Majallah al-Ahkam al-Adliyyah as civil law since 1893 AD. It is revealed in the introductory section of the magazine, *“Adalah kitab ini mengandungi dalamnya bicara hukum-hukum fiqh yang diterbitkan daripada syari’at al-Islam yang telah dipakai dalam kerajaan Johor selama-lamanya dengan bahasa Arab.”* (Majalah Ahkam Johor: 1331H: Chapter of Introduction).

Then the child to the king during the reign of Sultan Ibrahim called, the code has been translated into Malay and was named "Majalah Ahkam Johor". He was used as a guide with regard to Islamic rules officially in Johor in 1913. The problem is the extent to which impressions and implementation this Islamic law in Johor. Is there a law he ever executed in Johor memorable or just as a document of Islamic law is used as reference material solely? To answer this question needs to be seen Majalah Ahkam Johor with more depth than the content aspects of the content and implementation in the state of Johor.

1.1 Majalah Ahkam Johor

There are two versions of the text different of Majalah Ahkam Johor contents in the introduction but has similarities in other parts. Both versions of the text written in Jawi, measuring 16 x 20 cm and has 359 pages. It was printed in "Matba` Khairiyyah Muar" without mentioned date. The first text is not stated who the publisher and the possibility that it is the beginning of the published text. In the introduction states that this book contains the proceedings of fiqh laws derived from Islamic law that has been adopted in the Johor government forever in Arabic.

Its use dates back to the Sultan Abu Bakar visit to Othmaniyyah Turkish Government in 1893 AD. Then it is translated into the Malay language so that it is easy to understand. Once the translation is confirmed, it was presented to His Majesty the Sultan Ibrahim and requested permission to be printed and used as one of the books of the relevant guidance with syariah laws. Truth it does so is according to the exceptions mentioned in the Johor Government Laws clause in the 49th and named the book "Majalah Ahkam Johor".

In part also stated that the permission granted by the Sultan of Johor to the State Mufti, Sheikh Abdul Kadir bin Mohsin Al-Attas is a letter from Dato 'Acting State Secretary of Johor bill. 998/13 dated 29th. November, 1913 AD. Truth on the date indicates the onset Majalah Ahkam Johor used as a book of guidance with respect to syariah law in the state of

Johor. However found the book does not cover a whole in matters pertaining to syara` law but only on Islamic civil law and is stated at the end of the court rules.

The second text of Majalah Ahkam Johor published by Al-Mansor Adabi, a book printing company in Singapore law known as "Malayan Law Journal". In the introduction it is stated that in respect of the Laws of the State of clauses 49 and 57 of Johor, Sultan Ibrahim, with the consent of the members of the justice and religious positions of and confirming Majalah Ahkam Johor to be used by the gentlemen officers, magistrates and judges in the state of Johor in matters concerning Islamic law. The directive was issued by the Mufti of Johor dated 29 Muharram, 1331 AH 21 November, 1913 AD.

Different this second text of the first text in the Introduction where the Mufti of Johor refers to himself as "al-Haqir" means a blasphemer in the end notes. While the second text Mufti concluding with the inscription "to order." Thus this second text which is text Majalah Ahkam Johor was Johor official use. This is due to the instructions for use contained therein is published by a printing company law.

Text while the first is simply the introduction of an application is the book that will be implemented in the state of Johor. Then in 1988 AD, it was romanized by Abu Bakar Hamzah with the title "The Matched Majalah Ahkam Johor From Majallah al-Ahkam al-`Adliyyah." (Abu Bakar Hamzah: 1988).

Both texts Majalah Ahkam Johor contain sixteen books or substantial and 1,851 maddah title or number. It begins with the introduction of fiqh contained in maddah 1 to 100 (Ibid.: 1-14). In the first book set on sale and it contains advances and seven chapters (maddah 101-403) (Ibid.: 15-64). Book the second in respect of rent and included in it about wages and salaries. Scripture contains advances and eight chapters (maddah 404-611) (Ibid.: 65-99). Third scripture say about kafalah or liability, contains advances and three chapters (maddah 612-672) (Ibid.: 100-111). Book a fourth state of hiwalah the transfer debt from one dependent on the other dependents bearing advances and two chapters (maddah 673-700) (Ibid.: 112-117). Book fifth state of mortgage advances and containing four chapters (maddah 701-761) (Ibid.: 117-127). Book sixth state of trust contains advances and three chapters (maddah 762-832) (Ibid.: 128-144).

Scripture seventh state about grants or grant contains advances and 2 chapters (maddah 833-880) (Ibid.: 144-151). Book eight states the confiscation and damage containing advances and 2 chapters (maddah 881-940) (Ibid.: 151-164). Book ninth state about Hijr or tubular, ikrah or force and Al-Shuf `ah or collected, contains advances and three chapters (maddah 941-1044) (Ibid.: 164-181). Book tenth state of syarikah containing advances and 8 chapters (maddah 1045-1448) (Ibid.: 182-264). Book eleventh state of wakalah containing advances and three chapters (maddah 1449-1530) (Ibid.: 265-282). Book of the twelve states about Perk and ibra 'or release bearing advances and fourth chapters (maddah 1531-1571) (Ibid.: 282-291). Scripture states about ikrah thirteenth containing advances and four chapters (maddah 1572-1612) (Ibid.: 292-304).

Book of the fourteenth state of the allegations contained advances and 2 chapters (maddah 1613-1675) (Ibid.: 304-323.). Book of the fifteenth state of witnesses and the oath, which contain advance and four chapters (maddah 1676-1783) (Ibid.: 323-348). Book of the

end of the sixteenth Bible say about the sentence that contains advances and fourth chapters (maddah 1784-1851) (Ibid.: 348-361).

1.2 Implementation of Majalah Ahkam Johor

Referring to the Laws of the Constitution of Johore 1895 as mentioned in the Muqaddimah Majalah, the two clauses referred to as a backup that allows this law implemented in the state, which is clause 49 and 57. Clause 49 provides that, *“Adapun pekerjaan-pekerjaan Mesyuarat Kerajaan itu iaitu terutamanya membantu akan Raja dan Jemaah Menteri dalam hal-hal mentadbirkan negeri dan rakyat iaitu seperti membuat dan menjadikan membetul dan menambah atau meminda akan undang-undang dan aturan daripada segala jenis dan rupa melainkan undang-undang igama dan hukum syara`”* (Undang-Undang Tubuh Johor, Fasal 49).

Provisions above mentioned exceptions in tasks Government Meeting. Although the main task is to formulate and amend the law, but it should be other than the Islamic law and syariah law. Under the provisions of this act Sultan implement Islamic law in Johor and one of them by implementing Majalah Ahkam Johor. Effective use was started on 29 November, 1913 AD. Clause 57 also mentions, *“Adalah yang dikatakan “igama negeri” bagi jajahan dan kerajaan Johor ini iaitu igama Islam maka yang demikian hendaklah igama Islam itu berpanjangan berkekalan selama-lamanya menjadi dan diaku dan disebut “igama negeri” yakni tiadalah sekali-kali boleh sebarang igama lain dijadikan atau disebut igama negeri sungguhpun segala igama lain ada dibenarkan dan sentiasa termaklum patut dibenarkan dengan aman dan sempurna boleh diperigamakan dalam segala jajahan dan segenap daerah taklok kerajaan Johor oleh orang-orang yang berigamakan dia.”* (Ibid.: Fasal 57).

The above provisions are relevant to the implementation of Islam as the state religion covering also aspects of the implementation of Islamic law. This shows that the implementation of the law other than the Islamic law is acceptable for adherents of other religions in peace and perfect. However, what happened in Johor before the year 1913 AD is based Addressing Sultan Ibrahim, (Royal Address to His Royal Highness London: 1930), namely the implementation of Islamic law in Johor is most effective before 1908 AD. After the 1908M, Johor start using English law as "Panel Code" and the civil court system or the "Civil Court". Then in 1913 AD Majalah Ahkam Johor then implemented. British influence in interfering in the administration of the most effective Johor was in 1914 AD that allows English officially put a general advisor. However in the case of English law, it was implemented earlier in Johor with several enactment of the law introduced by the British.

Implementation enactment in Johor actually has resulted in numerous conflicts of laws in the state. Despite the fact that Islamic law cannot be amended or modified by any enactment, (Ibid.: Clause 49) but as they did in the case of Wong Ah Fook versus State of Johore (1 JLR 1 (1915) MLJ (1937) vol. VI 128) was the opposite. The case seems to have challenged the position of Islam as the state religion and the judge clearly ruled Johor law is not really Islamic law.

Implementation enactment really challenging the position of Islam as the religion of the state of Johor occurred in 1919 AD with Muslim Persons Offences Enactment in 1919. Implementation gets a great reaction from the judges in the civil courts as exemplified in the

case of Anchom bte Lampong versus Prosecutor (2 BRC 78 (1939), ML (1940) 22). In this case the plaintiffs have argued saying Islamic law is part of the law of. Therefore Muslim Persons Offences Enactment 1919 is opposed or "ultra vires" of the Constitution of Johor and sentence is invalid. The Court rejected the argument and held that the Court has no jurisdiction to declare a legislative enactment passed by the State Assembly and assented to by the Sultan is "ultra vires" of the Constitution of. Unlike the case of Fatimah bte Hj Hanis versus Ismail bin Tamin (2 BRC 67 (1939) MLJ (1939) 134). Judge ruled that the law of Johor is using Islamic law, based on a case Ramah versus Laton ((1927) 6 FMSLR 128).

The above facts clearly explained to us that the role of English judges in Islamic law aside in Johor is so effective. A case is decided whether it is said in Islamic law or not is based on their results. They make the excuse that this is due to Islamic law as state law does not clearly mention in the Laws of the Constitution. So they're free to interpretation, what was the legal basis or the "law of the land" for the state of Johor.

Similarly, the implementation of Majalah Ahkam Johor. Implementation occurs when Johor was experiencing conflicts of laws. English with authority desperately trying waive implementation of Islamic law. In the early stages they categorize all existing laws, including Islamic law as enactment. This can be seen during the drafting Enactment No. 1 of 1911 in which it makes the interpretation of "enactment" as, "...shall mean an Enactment passed by His Highness the Sultan in Council whether before or after the commencement of this Enactment, and shall include an Order in Council or Proclamation made before the commencement of this Enactment." (Enactment No. 1 of 1911, Chapter 2 (xiii)).

1.3 Conclusion

In conclusion implementation of Majalah Ahkam Johor actually has a great impact in the history of Islamic law in the state of Johor. The magazine was taken from Majallah al-Ahkam al-Adliyyah implemented under the Ottoman Government ruled in 19th century AD, including colony in West Asia.

This shows the Johor Government relations with West Asia has been so closely intertwined with particularly during the reign of Sultan Abu Bakar and generally before the existence of the Islamic Government of Malacca again. Marital relations, trade, culture, arts, law and so assures us that the strong relationship between the two countries have gone a long time.

Reference:

- Abdullah bin Muhammad (Okt, 1971), "The Travels of Abu Bakar, Maharajah Johore to the Far East", Kuala Lumpur: Malaysia in History, vol. XIV, No. 1.
- Abu Bakar Hamzah (1988), *Majalah Ahkam Johor Yang Dipadankan Dari Majallah al-Ahkam al-Adliyyah*, tanpa penerbit.
- Aturan Menjalankan Bicara Mahkamah Syar'iyah Di Dalam Perkara Yang Berkenaan Dengan Hal Ehwal Al-Syahsiyyah* (2603), Johor Bahru: Jabatan Agama Johor.
- Buyong Adil (1980), *Sejarah Johor*, Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Fawzi Basri (1983), *Warisan Sejarah Johor*, Kuala Lumpur: Persatuan Sejarah Malaysia.

Majalah Ahkam Johor, Muar: Kerajaan Johor, 1331H.

Mohd. Said Hj. Sulaiman (1951), *Hikayat Johor dan Tawarikh Yang Maha Mulia Ibrahim Sultan Johor Dari Permulaan hingga Kedatangan Jepun*, Johor Bahru: Pejabat Cetak Kerajaan Johor.

Onn Jaafar (1935), *Selamat Johor, Tanda Kenang-Kenangan Pengingat Kesyukuran Ulang Tahun yang ke-40 bagi ke bawah DYMM Sultan Ibrahim bersemanyam di Singgahsana Tahta Kerajaan Johor*, Singapura.

Peraturan Mahkamah Kadi Syar'iyah Bagi Menjalankan Perkara-Perkara Yang Berkenaan Dengan Ehwal Orang-Orang Islam (1934), Johor Bahru: Jabatan Agama Johor.

Shahnon Hussein(1950), *Tawarikh Johor*, Johor Bahru: Jabatan Persuratan Guru-Guru Melayu.

Shamsiah Ibrahim (1976), *The Administration of Islamic Law in Johor*, Tesis LLB Universiti Malaya, unpublished.